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**OFFICE OF PETITIONS**

In re Application of

Srivats, et al.

Application No. 10/585,389

Filed: October 14, 2008

Attorney Docket No. **04-40395-US**

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.181(a) to withdraw the holding of abandonment, filed February 27, 2012.

The petition under 37 CFR 1.181(a) to withdraw the holding of abandonment is **dismissed**.

This application was held abandoned on July 19, 2011, after it was believed that no response was received to the final Office action mailed April 18, 2011. The notice allowed a shortened statutory period for reply of three (3) months from its mailing date. Extensions of the time set for reply were available pursuant to 37 CFR 1.136(a). A Notice of Abandonment was mailed on February 23, 2012, indicating that a reply to the notice was not received.

Petitioner maintains the imposition of the holding of abandonment was improper because a Notice of Appeal was filed on October 18, 2011

A review of the application file history reveals that an amendment after final rejection was filed on October 18, 2011, along with a Notice of Appeal and fee to be entered in the event that the amendment after final rejection did not place the application in condition for allowance. On November 22, 2011, an Advisory action was mailed indicating that the amendment filed October 18, 2011, failed to place the application in condition for allowance. Accordingly, applicant had two months from the date the Notice of Appeal was filed in which to file an appeal brief. See 37 CFR 41.37. Extension of time where available under 37 CFR 1.136(a). The record does not reflect that an appeal brief was filed within the allowable period. The period set for reply to the final Office action may have been tolled by the filing of the Notice of Appeal, but a new period was set by the filing of the Notice of Appeal allowing an extendable period of two months in which to file an appeal brief. No response, i.e., an appeal brief or a Request for Continued Examination was filed within the allowable period. The application was, therefore, abandoned on December 19, 2011.

The petition is dismissed, accordingly.

Alternatively, petitioner may revive the application based on unintentional abandonment under 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply, the required petition fee (\$1860.00 for a large entity and \$930.00 for a verified small

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entity), and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents  
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By facsimile: (571) 273-8300  
Attn: Office of Petitions

Telephone inquiries regarding this decision should be directed to the undersigned (571) 272-3222.

/Kenya A. McLaughlin/

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